IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.817 OF 2004

M/s.Mangal Enterprises. ... Appellants.
Versus.
Pune Municipal Corporation & ors. ... Respondents.

Shri G.S.Godbole for the Appellant.

Shri R.G.Ketkar for the Respondents Nos.1 & 2.

CORAM : ABHAY S. OKA, J.

DATED : 2nd February, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The finding of both the Courts below is that the iron bar fencing in dispute has been constructed without obtaining the permission of the Competent Authority. After having heard the learned Counsel appearing for the parties and after perusing the Judgments of the Courts below, I find no fault in the findings of the Courts below as the Appellant has not come out with a case that there was a permission granted for construction of the fencing. In view of this position, the impugned notice dated 16th October 1997 issued by the Respondent No.1-Corporation which was the subject matter of challenge in the suit cannot be said to be illegal or invalid. As the erection of fencing is illegal, no substantial question of law is involved and the Second Appeal deserves to be dismissed.

2. At this stage Shri Godbole, the learned Counsel appearing for the Appellants submitted that the order of dismissal of the Appeal should not come in the way of the Appellant applying for regularisation of the fencing in dispute. He stated that the demolition of the fencing be postponed for sometime so that application for regularisation can be made by the Appellant and can be considered by the Respondent No.1-Corporation. The said prayer is reasonable.

3. Hence the following order is passed:

(i) The Second Appeal is dismissed with no order as to costs.

(ii) The dismissal of the Second Appeal will not prevent the Appellant from making an application to the concerned authority of the Respondent No.1-Corporation for tolerting/regularising the fencing in question. If such application is made within a period of six weeks from today, the concerned authority of the Respondent No.1-Corporation will consider and decide the same in accordance with the law within a period of six weeks from the date of making the application. The concerned authority of Respondent No.1-Corporation will communicate the decision on the said

application to the Appellant within a period of one week from the date of decision.

(iii) The parties will maintain statusquo as regards the fencing for a period of 20 weeks from today.

(iv) The parties to act on an authenticated copy of this order.

Judge.